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No. 09-185

Supreme Court, U.S.
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In The

Supreme Court of the United States

JOHN F. ANDERSON,

Petitioner,

v.

THE IOWA CITY DEVELOPMENT BOARD, *et al.*,

Respondents.

On Petition For A Writ Of Certiorari To The Court Of Appeals Of Iowa

BRIEF IN OPPOSITION

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COUNTER-STATEMENT OF QUESTION PRESENTED FOR REVIEW

Whether this Court has jurisdiction over this case, where no federal questions were ruled upon by the State Court.

PARTIES INVOLVED

Petitioner: John F. Anderson

Respondents: Iowa City Development Board and The City of Des Moines, Iowa

STATEMENT OF JURISDICTION

Respondent believes there is no jurisdiction as the State Court did not rule upon any federal questions. *See*: 28 U.S.C. § 1257.

STATEMENT OF THE CASE

This is an annexation case. The City of Des Moines initiated an involuntary annexation. The City Development Board of Iowa, Respondent in this case and the administrative agency charged with annexation oversight, approved the annexation. Upon Petitioner's administrative appeal, the Iowa District Court affirmed the City Development Board. (Petition for Writ of Certiorari, Appendix, 16a-35a). The Iowa Court of Appeals affirmed the Iowa District Court in all respects. (Petition for Writ of Certiorari, Appendix, 1a-15a). The Iowa Supreme Court declined to grant further review. (Petition for Writ of Certiorari, Appendix, 35a).

WHY THE PETITION FOR WRIT OF CERTIORARI SHOULD NOT BE GRANTED

In his "Questions Presented For Review", Petitioner references the First and Fourteenth Amendments to the U.S. Constitution as well as 42 U.S.C. §§ 1983, 1985 and 1986. (Petition for Writ of Certiorari, P. i-ii). The same constitutional and statutory provisions are again mentioned several

pages later. In addition, 28 U.S.C. § 1257(a) is identified as the statute conferring jurisdiction upon this court. (Petition for Writ of Certiorari, P. 3).

A review of the ruling of the trial court shows no mention of 42 U.S.C. §§ 1983, 1985 or 1986. Likewise, no mentions of rights guaranteed under the First Amendment to the U.S. Constitution are discussed. (Petition for Writ of Certiorari, Appendix, 16a-35a). There is mention of due process rights in the trial court ruling. (Petition for Writ of Certiorari, Appendix, 18a).

A review of the decision appealed from, rendered by the Iowa Court of Appeals, also reveals no reference to any claims made under 42 U.S.C. §§ 1983, 1985 or 1986 or the First Amendment to the U.S. Constitution. (Petition for Writ of Certiorari, Appendix, 1a-15a). As to the due process claims, those also were not ruled upon by the Iowa Court of Appeals. Although the District Court found that due process issues had been preserved before the administrative agency, those issues were waived by Petitioner on appeal. The Court said:

> . . . the court concludes that the following issues were raised before the agency and initially preserved . . . 2) whether the petitioner's procedural due process rights have been violated; 3) whether his substantive due process rights have been violated . . . of these issues, the first three have been waived as a result of petitioner's inability to cite any meaningful authority beyond the occasional

> generic reference to the Constitution or the phrase "due process."

The Iowa Court of Appeals first noted, and agreed with, the lack of preservation of any federal question. (Petition for Writ of Certiorari, Appendix, 8a-9a). The Court of Appeals then affirmed the District Court, saying:

> We have thoroughly reviewed the briefs and the record in this case. The district court's ruling on Anderson's petition for judicial review is well reasoned and fully supported by the record. We adopt its reasoning as our own and for all the reasons stated therein, we affirm. *See*: Iowa Ct. R. 21.29(1)(d).

(Petition for Writ of Certiorari, Appendix, 10a).

None of Petitioner's federal issues have been ruled upon by the state court. Those issues are raised here for the first time. This Court has no jurisdiction. *Cardinale v. Louisiana*, 394 U.S. 437, 438, 89 S.Ct. 1161, 1162-63, 22 L.Ed.2d 395 (1969).

CONCLUSION

Because none of the federal issues asserted by Petitioner were decided by the state courts, this Court lacks jurisdiction over this case.

Respectfully submitted,

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